



23rd Floor
50 California Street
San Francisco, CA 94111

Thomas R. Burke
415-276-6552 tel
415-276-6599 fax

thomasburke@dwt.com

June 2, 2025

BY ECF

Honorable Vernon S. Broderick
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 518
New York, New York 10007

Re: *The Intercept Media, Inc. v. U.S. Department of Government Efficiency* (25-cv-02404) –
Second Letter Regarding Supplemental Authority

Dear Judge Broderick:

This firm represents Plaintiff The Intercept Media, Inc. (“The Intercept”) in the above-captioned action. The Intercept respectfully asks this Court to take notice of another recent decision that is relevant to the Motion to Dismiss (ECF No. 19) (the “Motion”) filed by Defendants the United States Department of Government Efficiency and United States Digital Service (“USDS”).

On May 27, 2025, the United States District Court for the District of Columbia issued an order in *State of New Mexico, et al., v. Elon Musk, et al.*, Case No. 25-cv-429 (TSC) (attached hereto as **Exhibit A**). In the decision, the court concluded that the complaint’s allegations that that Mr. Musk “directs actions by other federal employees, including DOGE personnel, briefs President Trump only ‘as needed, and acts ‘without advance consultation with President Trump or White House staff,’” indicated Mr. Musk served in more than a “purely advisory role.” *Id.* at 32 (citations omitted). It therefore denied defendants’ motion to dismiss plaintiffs’ claim under the Appointments Clause alleging that Mr. Musk via DOGE has been unlawfully exercising significant executive authority over the federal government without proper constitutional appointment..

As The Intercept explained in his first Letter Regarding Supplemental Authority (ECF No. 22), “[i]t is fairly standard practice for parties to occasionally send letters or to otherwise file supplemental authority after briefing is complete.” *Delgado v. Ocwen Loan Servicing, LLC*, No. 13-CV-4427(NGG) (ST), 2016 WL 4617159, at *7 (E.D.N.Y. Sept. 2, 2016). Ordinarily, The Intercept would refrain from submitting successive supplemental authority letters, but is compelled to here due to the rapidly evolving state of relevant law.

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The Intercept respectfully asks that the Court take the decision under advisement in its consideration of Defendants' pending Motion.

Thank you for your consideration.

Respectfully submitted,

Davis Wright Tremaine LLP

/s/ Thomas R. Burke

Thomas R. Burke

cc: All counsel of record (via ECF)